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Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of ) MM Docket No. 00-69  
 )  
Amendment of Section 73.202(b) ) RM-  
Table of Allotments )  
FM Broadcast Stations )  
(Cheboygan and )  
Rogers City, Michigan )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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REPLY COMMENTS

On June 16, 2000, D & B Broadcasting L.L.C., licensee of radio station WSRQ(FM) Bear Lake, Michigan, along with Fort Bend Broadcasting Company, proposed Assignee of WSRQ(FM) (hereinafter referred to jointly as "DB/FB") filed a Counterproposal in this proceeding. On that same date, a Counterproposal was also filed by Northern Radio Network (hereinafter "Northern") 1/, and four days later, on June 20, 2000, Comments were filed on behalf of Escanaba License Corp (Hereinafter "Escanaba"). DB/FB herewith offers its Reply to the Comments filed by Escanaba and Northern:

**I. The Comments filed by Escanaba Were Untimely  
and Should Be Disregarded.**

The comment date specified in the NPR was June 16, 2000.  
Paragraph 9 of the NPR also specified that Comments could be

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1/ There is some confusion on this since Northern, licensee of WHAK(FM), had been required in the NPR to "Show Cause" by the Comment Date why its license should not be modified as proposed in the NPR. It is assumed that its "Comments and Counterproposals" was filed as its response to the Show Cause requirement.

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filed "on or before June 16, 2000". It did not indicate that such comments could be filed later than that date. Reference to the Escanaba comments indicate they are dated June 9, 2000, with a cover letter also dated June 9, 2000, and that they were mailed "via Priority Mail". The document is then date-stamped by the FCC as having been received by the FCC on June 20, 2000, 11 days after the date on the pleading and 4 days late beyond the comment date. The Certificate of Service accompanying the Comments certifies that copies of the Comments were sent to Ives Broadcasting and Kathleen Scheurle of the Commission on March 31, 2000.

Were it a pivotal matter, the morass of 'what was filed and when it was filed' would have to be sorted out. As it stands, however, for the reasons set forth in our Counterproposal as filed on June 16, the original proposal of Escanaba, even if considered arguendo, is on its face substantially inferior to the Counterproposal of DB/FB and if that is determined to be the fact by the Commission, it would then become unnecessary to determine whether a fact situation exists that would excuse the late filing by Escanaba. The question should be moot.

**II. The Comments and Counterproposals of Northern Radio Network Corporation Are Legally Flawed, Containing A Fatal Engineering Defect, Which Makes the Counterproposal Unacceptable for Filing Or Consideration In This Proceeding.**

Northern's position as stated in its Counterproposal is that it does not wish to change channels at WHAK(FM) from 26C2 to 292C2 as proposed in the NPR. In the alternative, Northern proposes to allot channel 249C3 to Cheboygan and Channel 292C2 to

Onaway, Michigan. Whatever it may be, the Northern plan does not qualify as a Counterproposal in Docket 00-69. The simple reason for this is that the Northern plan is not in conflict with the proposal set forth in the NPR. Specifically, we note that the NPR proposed allotment of channel 260C2 to Cheboygan, and that Northern proposes instead the allotment of Channel 249C3 to Cheboygan. To recognize the obvious, those two proposals are eleven channels removed from each other, have nothing to do with each other, and are not in conflict with each other.

As further described in the attached Engineering Statement, Northern's own channel study provides conclusive proof that Northern's Counterproposal lacks the essential conflict, the required nexus, between what they propose and the original NPR as required for it to be considered as a counterproposal in this proceeding. As such, the Northern Counterproposal is fatally defective, unacceptable for filing in this proceeding, and must be rejected and dismissed as such. See e.g. Table of Allotments Marble Falls, Texas, DA 98-2564, Released December 18, 1998 at paragraph 10 "...the channel...was not mutually exclusive with the original NPRM's proposal...and, therefore, could not have been accepted as a counterproposal with respect to the NPRM".

**III. Even if Considered Arguendo, the Northern Proposal Would Also Have been Substantively Inferior to the DB/FB Proposal As a Matter Of Law.**

Finally, it must also be recognized as a matter of established and well-settled law that even if the Northern proposal had qualified as a legitimate, acceptable, and legally

valid counterproposal in this proceeding, which it clearly is not, it would still have been clearly substantially inferior to the DB/FB Counterproposal since Northern offered only a third service to Cheboygan and a first service to Onaway, while DB/FB offers two first services, one to Bellaire and one to Rapid River and under the Commission's well-established allotment policies, the two first service allotments proposed by DB/FB are clearly preferable to the one third-service and one first-service offered by Northern. See In Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

#### IV. Conclusion

The Comments filed by Escanaba were untimely and should be rejected as such, but even if considered would not alter their substantive deficiency as compared to the DB/FB Counterproposal. Likewise, the Counterproposal filed by Northern is patently and fatally flawed and should not be accepted or considered in this proceeding. Again, even if it were considered, It is clearly deficient, on a substantive basis, to the superior Counterproposal as offered by DB/FB.

Wherefore DB/FB respectfully submits that its Counterproposal is most clearly in the public interest and should be adopted.

Respectfully Submitted,

D & B BROADCASTING L.L.C.

by   
Jarrold D. Miller, Counsel

Miller & Miller P.C.  
1990 N Street, N.W., Suite 760  
Washington, D.C. 20036  
(202) 785-2720

FORT BEND BROADCASTING COMPANY

by   
Robert J. Buensie, Counsel

Law Offices, Robert J. Buensie  
12110 Sunset Hills Road, Suite 450  
Reston, Virginia 20190  
(703) 715-3006

July 3, 2000

Fort Bend Broadcasting Company  
Post Office Box 948  
Houston, TX 77001

Reply Comments  
MM Docket 00-69  
Cheboygan and Rogers City, Michigan

June 2000

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STATE OF ARIZONA                    )  
  )  
COUNTY OF MARICOPA                )           SS:

F. W. Hannel, after being duly sworn upon oath,  
deposes and states:

He is a registered Professional Engineer, by  
examination, in the State of Illinois;

He is a graduate Electrical Engineer, holding Bachelor  
of Science and Master of Science degrees, both in Electrical  
Engineering;

His qualifications are a matter of public record and  
have been accepted in prior filings and appearances requiring  
scrutiny of his professional qualifications;

The attached Engineering Report was prepared by him  
personally or under his supervision and direction and;

The facts stated herein are true, correct, and  
complete to the best of his knowledge and belief.



June 30, 2000

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F. W. Hannel, P.E.

F. W. Hannel, PE  
10733 East Butherus Drive  
Scottsdale, AZ 85259  
480) 585-7475  
Fax (815) 327-9559  
<http://fwhannel.com>

Fort Bend Broadcasting Company  
Post Office Box 948  
Houston, TX 77001

Reply Comments  
MM Docket 00-69  
Cheboygan and Rogers City, Michigan

June 2000

This firm has been retained by Fort Bend Broadcasting Company to prepare this engineering statement in support of its Reply Comments in the above captioned proceeding. In response to the Commission's Notice of Proposed Rulemaking 3 parties filed Comments<sup>1</sup> and/or a Counterproposal in this proceeding. The Comments of Escanaba License Corporation simply reaffirmed its interest in the Rulemaking proposal. Radio Station WHAK(FM), Rogers, Michigan filed a counterproposal which sought the assignment of FM Channel 249C3 to Cheboygan, Michigan as a third aural service and the assignment of FM Channel 292C2 to Onaway, Michigan. Fort Bend Broadcasting Company filed a counterproposal seeking a first local aural service to 2 communities in Michigan; a Class C1 assignment to Bellaire, Michigan as that community's first local service and the assignment of FM Channel 259A to Rapid City, Michigan as that community's first local aural service.

Initially it should be noted that the Fort Bend Broadcasting proposal to add 2 first local services to deserving communities serves the public interest in a manner superior to either of the competing proposals. The two first local assignments fully comply with the Commission's Rules, and both first local services are in conflict with other portions of the Fort Bend Broadcasting proposal.<sup>2</sup>

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<sup>1</sup> The original petitioner, Escanaba License Corporation, filed its Comments reaffirming its interest in its proposal on June 20, 2000, 4 days after the deadline for filing. Ordinarily, absent a good cause showing and/or a showing that the acceptance of the late filed material will not prejudice any party, the Commission enforces its filing deadlines in rulemaking proceedings strictly which would mean that the Comments of Escanaba License Corporation would not be acceptable for filing.

<sup>2</sup> This is in contrast to the proposal of Radio Station WHAK(FM) which proposes FM Channel 249C3 at Cheboygan as a third aural service. This channel is not in conflict with any proposal filed in this proceeding. It was apparently incorrectly added in a misdirected attempt to enhance the substance of the WHAK(FM) proposal which obviously sought to block the channel change that would be required if



The proposal of Radio Station WHAK(FM) is unacceptable for filing in this proceeding. The proposed assignment of FM Channel 249C3 at Cheboygan has no connection whatsoever to any portion of this proceeding. Attached as Exhibit E-1 is the channel study submitted by Radio Station WHAK(FM) in its counterproposal which clearly shows that the assignment of the requested channel is not in conflict with any other channel proposed in this proceeding.<sup>3</sup>

In contrast, the Fort Bend Broadcasting Company proposal seeks to add a first local service to 2 deserving communities, Bellaire and Rapid River, Michigan. Both communities are deserving of a first local aural service and both satisfy all of the standards for FM Allotment purposes.<sup>4</sup> The proposal is consistent in all its elements which are, in turn, in conflict with the initial rulemaking proposal.<sup>5</sup>

In summary, the proposal of Fort Bend Broadcasting Company is the superior proposal and should be adopted. The initial proposal simply sought to augment existing service to Cheboygan with the addition of a third local aural service. The proposal of Radio Station WHAK(FM) is unacceptable for filing in this proceeding because it includes a channel which is not in conflict with this proceeding. Even if that were not the case, the Fort Bend Proposal is the superior proposal and should be adopted by the Commission.

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either the Fort Bend Broadcasting or the Escanaba License Corporation proposals were adopted. It filed nothing in response the Commission's Order to Show Cause, apparently relying on its Counterproposal to stall any attempt to change the channel of WHAK(FM).

<sup>3</sup> The Commission has consistently maintained that there be some connection between elements of a Counterproposal. Counterproposals that simply "pile on" additional channels in a proposal have never been acceptable in rulemaking proceedings. Otherwise, a counter proponent in a proceeding in Michigan could claim first local service enhancement by adding a channel in, for example, a Texas community and claim that additional service as an enhancement to its proposal. Clearly this would lead to absurd results in rulemaking proceedings.

<sup>4</sup> Rapid River, for example, is an independent community of over 700 persons, is listed in both the 1990 US Census and in the Rand McNally Atlas, (1998 edition). It 2 banks, a school system with 525 students, 34 teachers and a taxable base of over 56 million dollars. Rapid River has 5 churches and a number of businesses with commercial activity sufficient to support 2 independent financial institutions. Clearly Rapid River is a community for FM Allotment purposes and is deserving of a first local aural service.

<sup>5</sup> Fort Bend Broadcasting was aware of a lower class channel for Cheboygan when it filed its proposal. It was also aware that inclusion of the non-related channel would have made its counterproposal, however meritorious in other respects, unacceptable for filing in this proceeding.

Fort Bend Broadcasting Company  
Post Office Box 948  
Houston, TX 77001

Reply Comments  
MM Docket 00-69  
Cheboygan and Rogers City, Michigan

June 2000

Exhibit E-1

Munn-Reese Inc.  
PO Box 220 - Coldwater MI 49036  
FIGURE 4  
TABULATION OF ALLOCATION SPACINGS

REFERENCE	CLASS = C3	DISPLAY DATES
45 34 46 N	Current Spacings	DATA 05-13-00
84 14 16 W		SEARCH 05-19-00
----- Channel 249 - 97.7 MHz -----		

Call	Channel	Location	Power	Dist	Azi	FCC	Margin
N. Lat.	W. Lng.				HAAT		
WIHC	LIC 250C2	Newberry	MI	117.57	325.7	117.0	0.57
46 26 58	85 06 04	CN	50.000 kW		150 M		
		Marathon Media Of Michigan	BLH199601118K				
WKLT	LIC 248C2	Kalkaska	MI	117.73	222.2	117.0	0.73
44 47 29	85 14 20	CN	32.000 kW		188 M		
		Northern Radio Of Michigan	BMLH19990303KB				
AL247	VAC 247B	Sault Ste Marie	ON	104.41	356.0	84.0	20.41
46 31 00	84 20 00	N	50.000 kW		150 M		
CBCEFM	OPE 248B	Little Current	ON	179.04	76.5	149.0	30.04
45 56 01	81 59 33	CN	21.000 kW		214 M		
WMRXFM	APP 249A	Beaverton	MI	189.40	187.1	142.0	47.40
43 53 16	84 31 45	CN	4.100 kW		122 M		
		Steel Broadcasting, Inc	BMLH19960717KB				
WMRXFM	LIC 249A	Beaverton	MI	189.40	187.1	142.0	47.40
43 53 16	84 31 45	CN	2.000 kW		122 M		
		Steel Broadcasting, Inc	BLH19880816LB				
WCMZFM	LIC 252C3	Sault Ste. Marie	MI	100.78	0.3	43.0	57.78
46 29 10	84 13 49	CN	25.000 kW		100 M		
		Central Michigan Universit	BLED19901113KA				

CERTIFICATE OF SERVICE

I, Robert J. Buenzle, do hereby certify that copies of the foregoing Reply Comments have been served by United States mail, postage prepaid this 3rd day of July, 2000, upon the following:

\*John A. Karousos, Esq.  
Federal Communications Commission  
Mass Media Bureau  
Portals II, Room 3-A266  
445 12th Street SW  
Third Floor  
Washington, D.C. 20024

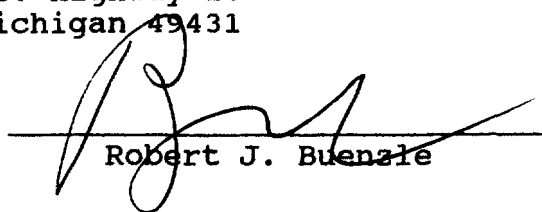
\*Kathleen Scheuerle, Esq.  
Federal Communications Commission  
Allocations Branch, Mass Media Bureau  
Portals II, Room 3-A247  
445 12th Street S.W.  
Washington, D.C. 20554

Denise B. Moline, Esq.  
PMB #215  
1212 So. Naper Blvd, Suite 119  
Naperville, IL 60540  
Counsel for Escanaba

Matthew H. McCormick, Esq.  
Reddy, Begley, & McCormick  
2175 K Street, N.W. Suite 350  
Washington, D.C. 20037  
Counsel for Northern Radio

Cary S. Tepper, Esq.  
Booth Freret Imlay & Tepper, PC  
5101 Wisconsin Avenue, N.W.  
Suite 307  
Washington, D.C. 20016-4120  
Counsel for Todd Stuart Noordyk

Radio Station WKLA  
5941 West U.S. Highway 10  
Ludington. Michigan 49431

  
Robert J. Buenzle

\* Served by Hand